



Special 881

**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

**Hon. Charley Lockhart
State Treasurer
Austin, Texas**

Dear Sir:

Opinion No. 0-1988

Re: Does Article 4371 of the Revised Civil Statutes prohibit the State Treasurer from paying Confederate Pension Warrants which are presented for payment after two years from the close of the fiscal year in which the warrants were issued?

We are in receipt of your letter of February 21, 1940, in which you request an Opinion of this Department on the question presented therein as follows:

"Does Article 4371 of the Revised Civil Statutes of the State of Texas prohibit the State Treasurer of Texas from paying Confederate Pension Warrants which are presented for payment after two years from the close of the fiscal year in which the warrants were issued?"

Article 6204 of the Revised Civil Statutes provides for the creation of a special fund for the payment of Confederate pensions. Said Article reads in part as follows:

"There shall be levied and collected in the same manner and at the same time that other ad valorem taxes are levied and collected for the year 1925, and annually thereafter an ad valorem tax of seven (7%) cents on the One Hundred Dollar (\$100.00) valuation thereof on all property owned in the State on the 1st day of January of 1925, and of every year thereafter, and on all property sent out of the State prior

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to the 1st day of January of any of said years for the purpose of evading the payment of taxes thereon and afterwards returned to the State, except so much thereof as may be exempted by the Constitution and laws of this State or of the United States, which valuation shall be made in the manner prescribed by law for the assessment, levy, and collection of other State and County taxes, which said tax so levied and collected shall be paid into the Treasury of the State of Texas, in the same manner as other State taxes, and shall constitute a special fund for the payment of pensions, as may be provided by law, to Confederate soldiers and their widows, and to other Texas soldiers and militiamen who served during the War between the States entitled to pensions under the laws of Texas, and their widows, and shall constitute a special fund for the payment of such pensions in the manner and under the rules and regulations as are and may be prescribed by law. . . ."

Article 6205 sets out the persons who are entitled to receive Confederate pensions.

It is to be noted that Article 6204 provides for the payment of the Confederate pension tax money into the State Treasury and same is a special fund to be paid out in the manner and under the rules and regulations prescribed by law.

Article 4344 of the Revised Civil Statutes provides in part as follows:

"Among other duties the Comptroller shall:

"16. Draw warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the treasury."

As Article 6204 specifically provides that the Confederate pension money is to be paid to the State Treasurer, said money is paid out by warrants drawn by the Comptroller on the Treasurer under the authority of Article 4344, supra.

Article 4371 of the Revised Civil Statutes as amended, in 1931, provides as follows:

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"The Treasurer shall countersign and pay all warrants drawn by the Comptroller on the Treasury which are authorized by law. No money shall be paid out of the Treasury except on the warrants of the Comptroller, and no warrant shall be paid by the Treasurer unless presented for payment within two years from the close of the fiscal year in which such warrant was issued, but claims for the payment of such warrants may be presented to the Legislature for appropriations to be made from which such claims may be paid. (As amended Acts 1931, 42nd Leg., p. 396, ch. 242, § 1)

This Department ruled in Opinion No. 0-1309, written by Honorable George W. Barcus, Assistant Attorney General, addressed to Honorable Charley Lockhart, State Treasurer, that Article 4371 is a limitation statute and that unless the original warrant or duplicate warrant issued in lieu thereof is presented to the State Treasurer for payment within the two year period, the Treasurer would not be authorized to pay the same.

You are advised that the payment of Confederate pensions under the statutes is by warrants drawn on the State Treasurer by the Comptroller of Public Accounts. Your attention is further called to the all-inclusive language of Article 4371, which provides:

"No warrant shall be paid by the Treasurer unless, etc."

It is the Opinion of this Department, therefore, that Article 4371 would apply to warrants drawn on the Confederate pension fund and that the same must be presented for payment within two years of the close of the fiscal year in which the warrants were issued before the Treasurer would be authorized to pay such warrants.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Billy Goldberg
Billy Goldberg
Assistant

EG:BBB APPROVED MAR 8, 1940

Gerald B. Mann
ATTORNEY GENERAL OF TEXAS

